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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MULTICARE HEALTH SYSTEM, a
Washington non-profit,

Plaintiff,

v.

CHS WASHINGTON HOLDINGS, LLC, a
Delaware limited liability company and
CHS/COMMUNITY HEALTH SYSTEMS,
INC., a Delaware corporation,

Defendants.

No. 2:22-cv-00007

COMPLAINT FOR DAMAGES
AND DECLARATORY RELIEF

Plaintiff MultiCare Health System (“MultiCare”), by and through undersigned counsel, hereby files this complaint against defendants CHS Washington Holdings, LLC and CHS/Community Health Systems, Inc. (together, “CHS”) seeking declaratory relief to enforce its rights under the June 30, 2017 Amended and Restated Asset Purchase Agreement by and among CHS Washington Holdings, LLC and CHS/Community Health Systems, Inc. and MultiCare Health System (“APA”).

MultiCare alleges as follows:

COMPLAINT (No. 2:22-cv-00007) – 1

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I. PARTIES

1. Plaintiff MultiCare is a Washington non-profit corporation engaged in providing healthcare and medical services through acute care hospitals and numerous other affiliated healthcare providers and entities.

2. Defendant CHS/Community Health Systems, Inc. is a for-profit Delaware corporation with its principal place of business in Franklin, Tennessee.

3. Defendant CHS Washington Holdings, LLC is a for-profit Delaware limited liability company with its principal place of business in Franklin, Tennessee. CHS Washington Holdings, LLC's governors include Kevin J. Hammons, Benjamin C. Fordham, and Tim L. Hingtgen. On information and belief, Mr. Hammons and Mr. Fordham are domiciled and therefore are citizens of Franklin, Tennessee. On information and belief, Mr. Hingtgen is domiciled and therefore is a citizen of Brentwood, Tennessee.¹

4. MultiCare has diligently searched publicly available information to confirm the identity of additional owners and members, if any, of CHS Washington Holdings, LLC, including by examining organizational filings with the Washington and Delaware Secretaries of State. But MultiCare has been unable to confirm the identity or citizenship of any additional owners or members. On information and belief, however, no owner or member of CHS Washington Holdings, LLC is a Washington citizen. *See Carolina Cas. Ins. Co. v. Team Equipment, Inc.*, 741 F.3d 1082, 1086 (9th Cir. 2014) (reversing dismissal of complaint that did not allege citizenship of LLC-defendant's members and owners, where such information was not reasonably available to plaintiff; "The diversity issues can be better considered by the court after the defendants have been served and had an opportunity to respond.").

¹ "Governor," as the Washington Secretary of State uses that term, encompasses LLC members, managers, directors, and partners, among others. RCW 23.95.105(12).

II. JURISDICTION AND VENUE

5. This Court has jurisdiction of this action under 28 U.S.C. § 1332(a)(1), there being complete diversity of citizenship between the parties and the matter in controversy exceeding the sum or value of \$75,000, exclusive of interest and costs.

6. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), in that a substantial part of the events giving rise to plaintiff's claims occurred in this District.

III. FACTUAL ALLEGATIONS

A. The Asset Purchase Agreement

7. Before July 1, 2017, CHS, through intermediary entities, owned or leased Deaconess Hospital and Valley Hospital (the "Hospitals"). CHS also owned businesses related to the Hospitals, including medical office buildings and outpatient care facilities (the "Facilities"). CHS further held rights as a Class B member of Rockwood Clinic, P.S. (the "Clinic"), including Rockwood Neurosurgery and Spine. The Clinic at that time employed Dr. Christopher Heller as a physician who worked in the Deaconess Medical Office Building.

8. On June 30, 2017, CHS, through the Asset Purchase Agreement, sold to MultiCare the Hospitals, the Facilities, all assets used in connection with the Facilities, and CHS's Class B membership in the Clinic. Ex. A § 1.1.

9. On July 1, 2017, MultiCare assumed ownership of select liabilities: obligations accruing from the effective date (called the "Effective Time") of the APA forward; certain accounts payable, accrued expenses, and other current liabilities; certain capital lease obligations; and obligations and liabilities related to accrued vacation and holiday benefits of Facilities employees. *Id.* § 1.3.

10. But the APA expressly carved out "excluded liabilities," for which CHS retained liability, including malpractice or general-liability claims arising from events pre-dating the APA's Effective Time. *Id.* § 1.4(b).

11. Consistent with that exclusion, the APA obligates CHS to indemnify MultiCare for malpractice and other claims arising out of pre-sale events.

12. In particular, Section 11.2 obligates CHS to defend, indemnify, and hold harmless MultiCare for excluded liabilities (including malpractice and general-liability claims) and third-party claims based on events that occurred prior to the Effective Time:

Seller shall defend, indemnify and hold harmless Buyer and its Affiliates, and its and their respective officers, directors, employees, agents, or independent contractors (collectively, “Buyer Indemnified Parties”), from and against any and all losses, liabilities, damages, costs (including, without limitation, court costs and costs of appeal) and expenses (including, without limitation, reasonable attorneys’ fees and fees of expert consultants and witnesses) that such Buyer Indemnified Party incurs as a result of, or with respect to . . . (iii) any of the Excluded Liabilities, [and] (iv) any claim made by a third party with respect to or arising out of the ownership of the Facilities or Assets or the operation of the Business prior to the Effective Time.²

13. If CHS fails to execute its indemnification obligations within ten (10) days of notice of claim, the APA vests in MultiCare the right, but not the obligation, to undertake its own defense “on behalf of and for the account and at the risk of [CHS].” Ex. A § 11.4.

14. The APA includes additional provisions to account for CHS’s retention of pre-sale liabilities and indemnification obligation. In particular, MultiCare agreed to provide CHS with copies of patient records “for purposes of pending claims or litigation involving a patient to whom such records refer, as certified in writing prior to receipt by counsel retained by [CHS] in connection with such litigation.” *Id.* § 10.4. It agreed to notify CHS in writing regarding any claim or liability covered by the indemnification provision within fifteen (15) days after receiving a third-party claim. *Id.* § 11.4. It agreed to “take all reasonable steps to mitigate all liabilities and claims” subject to CHS’s indemnification, “including availing itself as reasonably directed by

² “Business” encapsulates all activities and operations associated with the Assets, Facilities, and Clinic Sites. Ex. A, Recital D.

[CHS] of any defenses, limitations, rights of contribution, claims against third parties (other than [MultiCare’s] insurance carriers) and other rights at law,” and “provid[ing] such evidence and documentation of the nature and extent of any liability as may be reasonably requested by” CHS. *Id.* § 11.6. And both parties agreed to “act in a commercially reasonable manner in addressing any liabilities that may provide the basis for an indemnifiable claim (that is, each party shall respond to such liability in the same manner that it would respond to such liability in the absence of the indemnification provided for in this Agreement).” *Id.*

15. Section 10.20 of the APA further obligates CHS to maintain “all claims-made professional and general liability insurance policies of the Hospitals for claims related to the period of [CHS’s] ownership and operation of the Hospitals” and “excess insurance coverage” for those claims “relating to the Clinic or arising out of its operations during the period of [CHS’s] ownership” for at least ten (10) years following the asset sale.

B. MultiCare’s Insurance Coverage

16. Before the parties executed the APA, The Doctors Company served as the professional liability insurance carrier for the Clinic and its physicians. That insurance remained in effect after the asset sale.

17. In 2019, MultiCare purchased primary insurance coverage from Physicians Insurance for the physicians rather than from The Doctors Company. The new policy through Physicians Insurance provided prior-acts primary coverage for the Clinic physicians. The only policy MultiCare had, which would cover MultiCare and the entities that it acquired through the APA, provided coverage in the event that CHS defaulted on its contractual obligation to maintain such insurance for ten (10) years after the asset sale. *See* Ex. A § 10.20.

C. The Underlying Lawsuit

18. On March 4, 2020, Fasitupe Meafua accused MultiCare and Dr. Heller of malpractice. *See* Ex. B, March 4, 2020 Notice Letter. Mr. Meafua is a former patient of Rockwood Neurosurgery and Spine. Mr. Meafua alleged injuries “as a result of health care provided to Mr.



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